***Before the***
FEDERAL TRADE COMMISSION
**Washington, DC 20580**

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| In the Matter of | ) |
| | ) |
| Request for Investigation of The Topps Company, Inc., Operator of Candymania.com, for Violation of the Children's Online Privacy Protection Act. | ) |
| | ) |

**REQUEST FOR INVESTIGATION**

**Submitted by**

**Center for Digital Democracy**
**American Academy of Child and Adolescent Psychiatry**
**Campaign for a Commercial Free Childhood**
**Center for Science in the Public Interest**
**Consumer Action**
**Consumer Federation of America**
**Consumer Watchdog**
**Consumers Union**
**The Rudd Center for Food Policy and Obesity**
**United Church of Christ Office of Communication, Inc.**

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## Summary

The Center for Digital Democracy ("CDD"), joined by American Academy of Child and Adolescent Psychiatry, Campaign for a Commercial Free Childhood, Center for Science in the Public Interest, Consumer Action, Consumer Federation of America, Consumer Watchdog, Consumers Union, The Rudd Center for Food Policy and Obesity, and United Church of Christ Office of Communication, Inc., asks the Federal Trade Commission to investigate and take enforcement action against The Topps Company, Inc. for violating the Children's Online Privacy Protection Act Rule in connection with its child-directed website Candymania, its social media websites, and its online contest #RockThatRock.

Topps makes the candy Ring Pop and other candies popular with young children. Topps markets Ring Pop to children on the website Candymania and through contests such as #RockThatRock. This contest encouraged children to post photos of themselves wearing Ring Pops on Facebook, Twitter, and Instagram for a chance to have their photo used in a music video with tween band R5. Of the photos collected, Topps used several that were photos of children clearly under thirteen years old. The video, which can be viewed on Candymania and YouTube, has been viewed almost 900,000 times. In addition, Topps disclosed online contact information on the Ring Pop social media pages. It also used the online contact information to directly contact and market to children.

The COPPA Rule requires that websites directed to children under age thirteen give clear and understandable notice to parents and obtain verifiable parental consent before any personal information is collected, used, or disclosed. Here, Topps collected personal information, i.e., photos and online contact information, from children without providing notice to parents or obtaining verifiable parental consent.

Topps also violated the COPPA Rule by failing to post its children's privacy policy in a prominent manner, failing to provide a complete and understandable privacy policy, conditioning a child's participation in a contest on disclosing more information than is reasonably necessary, and retaining children's personal information for longer than was reasonably necessary.

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The Center for Digital Democracy ("CDD"), by its attorneys, the Institute for Public Representation, joined by American Academy of Child and Adolescent Psychiatry, Campaign for a Commercial Free Childhood, Center for Science in the Public Interest, Consumer Action, Consumer Federation of America, Consumer Watchdog, Consumers Union, The Rudd Center for Food Policy and Obesity, and United Church of Christ Office of Communication, Inc., asks the Federal Trade Commission ("FTC") to investigate and bring an enforcement action against The Topps Company, Inc. ("Topps") for operating the child-directed website Candymania.com, candy-related social media pages, and the online contest #RockThatRock in violation of the Children's Online Privacy Protection Act ("COPPA") and the COPPA Rule. Topps violated the COPPA Rule by, among other things, collecting, using, and disclosing personal information from children without giving notice to parents and without attempting to obtain verifiable parental consent.

## I. Background

Topps is a leading creator and marketer of trading cards, distinctive confectionery, and entertainment products.[1] In 1938, four brothers founded the company to convert their failing

[1] *Topps*, Tornante Co., http://tornante.com/portfolio-1-1 (last visited Dec. 9, 2014).

tobacco business into a chewing-gum manufacturer.[2] In 2007, Tornante, an investment firm owned by former Disney CEO Michael Eisner, purchased Topps for $385 million.[3]

### A. Topps markets candy to children.

Bazooka Candy Brands is a division of Topps that sells children's candy such as Baby Bottle Pop, Push Pop, Ring Pop, and Bazooka Bubble Gum.[4] Bazooka introduced Ring Pop in 1979. In 2013, Bazooka instituted "packaging and marketing changes under the leadership of a new marketing team, including several executives who joined the company from food giant Kraft Foods."[5] In an interview with AdAge, Scott Utke, Bazooka's new marketing director for non-gum brands, explained Bazooka's strategy:

> What we are trying to do is define what kids love about each of our brands at a more emotional level than just a product benefit, which is kind of what we've been doing in the past. . . .
>
> We are trying to broaden the frame of reference of these brands and think of what they stand for in terms of an emotional standpoint. ... So Ring Pop, for example, is about putting kids in the spotlight.[6]

Topps markets its children's brands on its website Candymania[7] and on official Bazooka candy pages on Facebook, Twitter, and Instagram.[8] Candymania is a website that advertises and allows children to interact with Bazooka products. It offers games, puzzles, and videos for

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[2] History, Topps, http://www.topps.com/corporate/history (last visited Dec. 9, 2014).
[3] *Former Disney Chief Adds Topps to His Collection*, DEALBOOK (Mar. 6, 2007), http://dealbook.nytimes.com/2007/03/06/topps-trades-itself-to-2-buyout-firms-for-385-million.
[4] *Company Info*, Candymania, http://candymania.com/company-info (last visited Oct. 16, 2014).
[5] E.J. Schultz, *How Bazooka Candy Is Rebranding for a New Generation Marketer Explains Strategy Behind Refreshing Push Pops, Other Brands*, ADAGE (Jan. 30, 2013), http://adage.com/article/cmo-strategy/bazooka-candy-reaching-a-generation/239475.
[6] *Id*. (ellipses in second paragraph in original).
[7] Appendix, Figure 1.
[8] *Ring Pop*, Facebook, https://www.facebook.com/ringpop; *Ring Pop Official*, Twitter, https://twitter.com/ringpopofficial; *Ring Pop Official*, Instagram, http://instagram.com/ringpopofficial.

children that incorporate the Bazooka candy. Topps also uses contests, such as #RockThatRock, to promote its children's candies.[9]

**B. The #RockThatRock contest.**

Topps ran the #RockThatRock contest in April 2014. Topps teamed up with the tween band R5 to release a video for the song "#RockThatRock."[10] Topps planned to use photos of people "Rocking that Rock" in the video. It chose to solicit those photos by creating a contest where children would upload a picture of themselves showing how that "rock that Ring Pop" to Facebook, Twitter, or Instagram with "#RockThatRock" in the message. This would provide the pool out of which Topps would choose the photos.

Designing the contest to use social media allowed Topps to easily collect and organize the submitted photos. When a child used the hashtag #RockThatRock in its post to Facebook, Twitter, or Instagram, it created an archive easily searchable by Topps or any internet user because a hashtag is a social media search tool. Users that search for "#RockThatRock" on social media will be able to see all posts with that hashtag in it.[11] Furthermore, under the Terms of Use for the #RockThatRock contest, Topps asserts that the use of the hashtag #RockThatRock "constitutes your consent and grant (or your parent/guardian's consent and grant if you are under the age of majority) to The Topps Company, Inc. ("Topps") of the irrevocable, non-exclusive, perpetual, worldwide, royalty-free, unrestricted, and unlimited right" to use the photograph in any way.[12]

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[9] Advertising candy to children is particularly problematic and provides further reason for FTC action. Studies show that childhood obesity is often linked to candy and other high-calorie snacks: "Chips, candy and other snack foods account for up to 27 percent of the daily caloric intake for children, age 2 to 18." *Study Finds Snacking is a Major Cause of Child Obesity*, Yale Medical Group (April 2, 2010), http://yalemedicalgroup.org/news/article.aspx?id=6584.

[10] *R5 Want You in their Music Video!*, Bop and Tiger Beat (March 12, 2014), http://www.bopandtigerbeat.com/2014/03/r5-want-you-in-their-music-video.

[11] Appendix, Figure 2.

[12] Appendix, Terms of Use.

After the contest was over, Topps selected "winners" from the user-submitted photographs to include in the music video, which was posted on Candymania and Youtube on June 9, 2014.[13] The music video incorporates eighty unique photographs submitted by contestants.[14] Many of these photographs are of children who look younger than thirteen.[15] Topps promoted the video with teasers consisting of short video clips of the band thanking fans for submitting their photographs.[16]

As of December 9, 2014, the song #RockThatRock had been viewed almost 900,000 times on YouTube. Topps continues to promote the hashtag #RockThatRock even though the contest has ended. On August 7, 2014, for example, Topps published a new commercial for Ring Pop showing clips of the #RockThatRock music video.[17] Topps continues to host #RockThatRock Friday on social media where the company reposts photographs submitted during the contest. For example, Topps last posted a photograph a user submitted on Instagram on December 5, 2014.[18] As of the date of this request, the music video remains on Candymania and the fan-submitted photographs are still publicly accessible on Ring Pop social media pages.

## II. Topps violated the COPPA Rule throughout the #RockThatRock contest.

The COPPA Rule makes it "unlawful for any operator of a Web site or online service directed to children . . . to collect personal information from a child" unless it provides notice

[13] The music video on Candymania is an embedded Youtube player. When children watch the video on Candymania, it counts those views on Youtube. Children can also view the music video directly on Youtube. *R5—#RockThatRock (Official Ring Pop Music Video)*, Youtube (June 9, 2014), https://www.youtube.com/watch?v=IeVVLq9NDTU.

[14] *Id*. The R5 #RockThatRock music video does incorporate two user-submitted videos in addition to the photos.

[15] *See* Section B.3.

[16] *Ring Pop*, Candymania (Sept. 16, 2014), http://www.candymania.com/ring-pop.

[17] *Ring Pop R5 #RockThatRock TV Commercial*, Youtube (Aug. 7, 2014), https://www.youtube.com/watch?v=sO2OcXT9nRI.

[18] Appendix, Figure 3.

and obtains advance, verifiable parental consent.[19] Topps owns and operates Candymania.com, a website directed to children. Because Topps collects and discloses personal information from children without giving any notice to parents or obtaining verifiable parental consent, it violates the COPPA Rule.

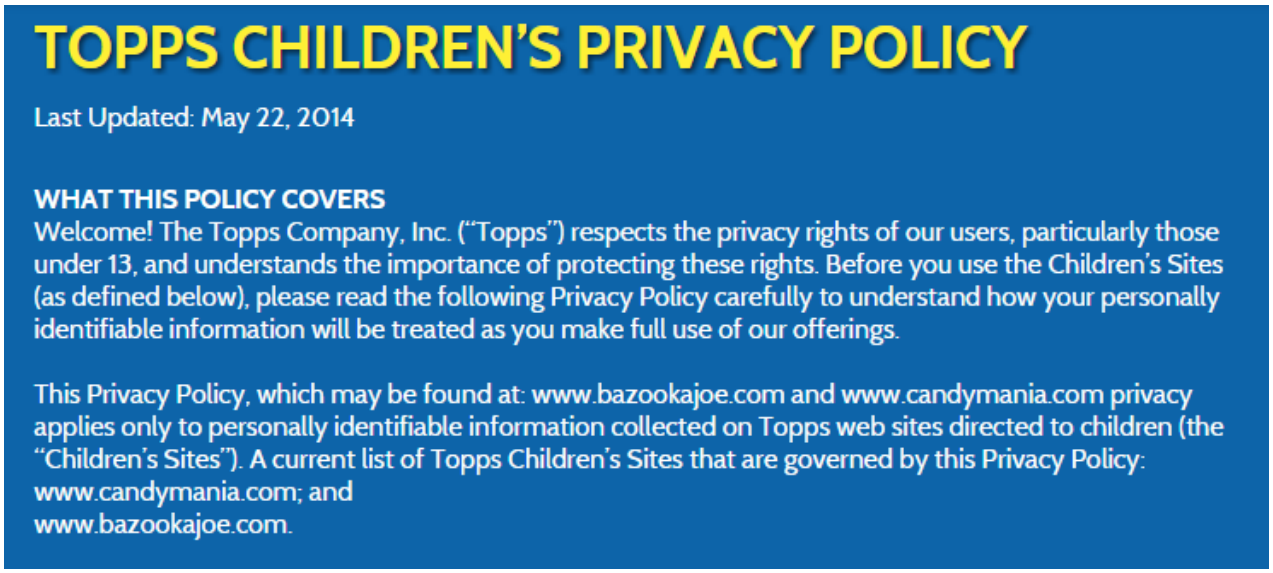
### A. Candymania.com is a website directed to children under thirteen.

There is no doubt that Candymania is a website directed to children. Indeed, Topps acknowledges that the website is intended for children. Moreover, application of the factors in the COPPA rule's definition of "directed to children" clearly show that Candymania is a website directed to children under thirteen.

#### 1. Topps acknowledges that Candymania is intended for children.

Topps directly states on Candymania that children are its intended audience. For example, at the beginning of the privacy policy, Topps states that Candymania is a "Children's Site" and it is one of two "Topps web sites directed to children."[20] The policy also says that it "respects the privacy rights of our users, particularly those under 13."[21] Both these statements are shown in the screenshot below.

[19] 16 CFR §312.3.
[20] See Appendix, Privacy Policy p 1.
[21] *Id.*



# TOPPS CHILDREN'S PRIVACY POLICY

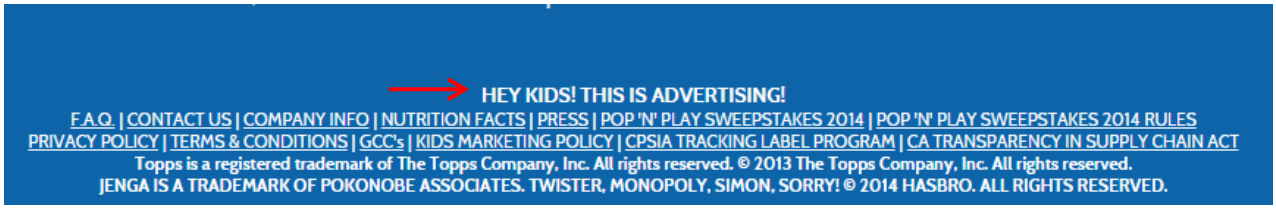
Last Updated: May 22, 2014

**WHAT THIS POLICY COVERS**

Welcome! The Topps Company, Inc. ("Topps") respects the privacy rights of our users, particularly those under 13, and understands the importance of protecting these rights. Before you use the Children's Sites (as defined below), please read the following Privacy Policy carefully to understand how your personally identifiable information will be treated as you make full use of our offerings.

This Privacy Policy, which may be found at: www.bazookajoe.com and www.candymania.com privacy applies only to personally identifiable information collected on Topps web sites directed to children (the "Children's Sites"). A current list of Topps Children's Sites that are governed by this Privacy Policy:
www.candymania.com; and
www.bazookajoe.com.

Additionally, every page of Candymania contains the disclosure, "Hey Kids! This is advertising!" (shown below).




These statements are the result of an investigation conducted by the Children's Advertising Review Unit ("CARU"). In its routine monitoring of websites directed to children, CARU investigated Topps in 2011 for two specific online games designed to promote the sale of Ring Pops.[22] Because CARU was concerned that Topps had not sufficiently labeled its online games, it asked Topps to "clearly disclose that games available to children on the site are advertising."[23]

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[22] This investigation was of topps.com.candy, a predecessor to Candymania.com. *The Topps Company Inc. Ring Pop Online Games*. Children's Advertising Review Unit, Case # 5303 (March 11, 2011) ("*CARU Decision*").

[23] *CARU Recommends Topps Modify Website to Clearly Disclose Advertising, Company Does So*, ASRC (Mar. 30, 2014), http://www.asrcreviews.org/2011/03/caru-recommends-topps-modify-website-to-clearly-disclose-advertising-company-does-so-2/.

During the investigation, Topps "acknowledged CARU's jurisdiction" and conceded that the primary audience of its website was children nine to twelve.[24] Topps then voluntarily complied with the CARU decision, stating in a press release that "Topps accepts CARU's decision in its entirety."[25]

Finally, Bazooka's marketing director admitted in an interview with AdAge that Topps markets candies such as Ring Pop to children. In addition to Mr. Utke's quote in section I.A., the interview contained the following exchange:

> Ad Age: Are you worried about new kids marketing restrictions covering sugary foods, such as Disney's move to restricting advertisements during its TV and radio shows?
>
> Mr. Utke: Obviously any time there's restrictions to advertising, that's something that concerns us. But there [are] a fair number of networks out there, so we still feel confident we will reach a fair number of kids.[26]

Thus, Topps admits that Candymania and the candies marketed on that website are directed to children.

**2. Analysis of the "totality of the circumstances" shows that Candymania is directed to children.**

Even though Topps' admissions are conclusive, Candymania is also child-directed under the multi-factor "totality of the circumstances test" set forth in the definition section of the COPPA Rule.[27]

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[24] *CARU Decision* at 2.

[25] *Id*.

[26] E.J. Schultz, *How Bazooka Candy Is Rebranding for a New Generation Marketer Explains Strategy Behind Refreshing Push Pops, Other Brands*, ADAGE (Jan. 30, 2013), http://adage.com/article/cmo-strategy/bazooka-candy-reaching-a-generation/239475.

[27] 16 CFR §312.2 ("In determining whether a Web site or online service, or a portion thereof, is directed to children, the Commission will consider its subject matter, visual content, use of animated characters or child-oriented activities and incentives, music or other audio content, age of models, presence of child celebrities or celebrities who appeal to children, language or other characteristics of the Web site or online service, as well as whether advertising promoting or

First, Candymania features the band R5, which is considered a "tween" band because it appeals to young girls. As one music review of the band noted, "[a]ny discerning 11-year-old should be able to take one listen to the group's debut and hear the similarities" to One Direction, another tween band.[28] Last year, R5 won the Radio Disney Show Stopper award "in recognition to their dedication to fan engagement."[29] In addition, lead singer Ross Lynch won the 2014 Nickelodeon Kid's Choice award for Favorite TV Actor for his role in the Disney Channel show "Austin & Ally."[30]

R5 has a large online following among children. Because of their fame, the #RockThatRock contest garnered a lot of interest on celebrity news and gossip sites for children. For example, the contest was highlighted on Shine-On Media, a fan-site for the hottest young celebrities;[31] JustJaredJr, Buzznet's children's version of the gossip site JustJared;[32] and Bop Tiger Beat, Scott Laufer's youthful, in-the-know news site.[33] Bop ran multiple articles describing

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appearing on the Website or online service is directed to children.").

[28] Tim Sendra, *All Music Louder Review*, All Music (Feb. 19, 2014), https://www.r5rocks.com/news/all-music-louder-review-116151.

[29] *2014 Radio Disney Music Award Winners — Full List: Selena Gomez & More*, Hollywood Life (Apr. 27, 2014), http://hollywoodlife.com/2014/04/27/2014-radio-disney-music-awards-winners-list.

[30] "The season 2 "Austin & Ally" premiere became the series' #2 telecast on record in Total Viewers (4.02 million) and Tweens 9-14 (1.79 million/7.5 rating), and was its most-watched telecast in over 8 months in Kids 2-11 (2.22 million/5.6 rating) and Kids 6-11 (1.84 million/7.8 rating) – since 1/29/12." Amanda Kondolojy, *Disney Channel is Total Day's #1 Cable TV Network in Total Viewers*, TV by the Numbers (Oct. 9, 2012), http://tvbythenumbers.zap2it.com/2012/10/09/disney-channel-is-total-days-1-cable-tv-network-in-total-viewers/152306; *Ross Lynch And R5 Have A Blast At The 2014 Nickelodeon Kids Choice Awards*, Disney Dreaming (Mar. 30, 2014), http://www.disneydreaming.com/2014/03/30/ross-lynch-and-r5-have-a-blast-at-the-2014-nickelodeon-kids-choice-awards.

[31] About SO-M, ShineOn-Media, http://www.shineon-media.com/site/about-so-m.

[32] About JustJared, JustJaredJr, http://www.justjaredjr.com/about.

[33] Laufer Media lists Bop's viewership as 13.9% six to ten year olds and 37.4% eleven to twelve year olds. Thus, over 51% of Bop viewers are under thirteen. The site's median age is 12. Advertising Materials, Laufer Media, http://laufermedia.com/advertise/bop (last visited Dec. 9,

how to enter the #RockThatRock contest. It also ran a poll to choose Ring Pop's new flavor with the band R5. Topps posted these Bop articles on the Ring Pop Facebook page to give children more information about the contest.[34]

Second, the visual content on Candymania appeals to children. As shown in the screen shot below, the website uses bold, primary colors.

Third, Candymania features many child-oriented activities, including printable games, silly pictures, animated games, and videos for children. Some examples include the following:

1) Printable games: "Hand Twister," based on the popular children's game, lets kids play the game "Twister" using only their hands and a Push Pop.[35]

2) Silly Pictures: Candymania has many pictures of a character named "Señor Sour" doing and saying humorous things. For example, one of these pictures shows him wearing a fake nose and giving costume advice for Halloween.[36]

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2014).

[34] Appendix, Figure 4.

[35] Appendix, Figure 5.

[36] Appendix, Figure 6.

3) Animated games: "Push Pop Up" is an animated "whack-a-mole" game that substitutes moles with the candy Push Pop.[37]

4) Videos: Candymania posts many videos, including old Bazooka commercials. One "vintage" Ring Pop commercial shows children enjoying their Ring Pops and playing together.[38] The website also features silly videos featuring young children, such as "Baby Bottle Pop Silly Videos" and "Baby Bottle Pop Tongue Tricks."

Fourth, in addition to using celebrities such as R5, Candymania uses animated characters that appeal to children. For example, the website features a co-branded advergame with Dreamworks with dragons from the animated film "How to Train Your Dragon 2."[39] This film is marketed to children; it is rated PG and Common Sense Media recommends the movie for children age seven.[40]

Fifth, the language on Candymania directly addresses children. One of the videos shows members of the band R5 giving children tips on "how to rock the first day back at school," which includes wearing a Ring Pop.[41] For Halloween, Topps gave children ideas for different types of tricks they could pull: "Tell your dad you saw a ghost, and it wants a dollar."[42] This type of language attracts children and makes Candymania seem like an online friend with whom children can have fun and ask advice.

Sixth, the subject matter of Candymania is candy, a product that appeals to children. According to the FTC's latest report, the candy industry spent $22 million in 2009 to market

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[37] Appendix, Figure 7.
[38] Appendix, Figure 8.
[39] Appendix, Figure 9.
[40] *How to Train Your Dragon 2*, Common Sense Media, https://www.commonsensemedia.org/movie-reviews/how-to-train-your-dragon-2 (last visited Nov. 19, 2014).
[41] *R5's Top 3 Back to School Tips*, Candymania, http://www.candymania.com/video/r5s-top-3-back-to-school-tips (last visited Nov. 11, 2014).
[42] Appendix, Figure 10.

candy and frozen desserts to children ages two to eleven.[43] While most major candy companies have joined the self-regulatory Consumer Food and Beverage Advertising Initiative ("CFBAI"), which requires its members to only market products to children that meet its nutritional standards, Topps has not.[44]

Taken together, these factors demonstrate that Candymania is a website directed to children under thirteen. Thus, Topps must treat all users as if they are children and comply with all of the COPPA protections.[45]

### B. Topps collected and disclosed personal information from children under age thirteen through Candymania and its social media sites.

The COPPA Rule makes it unlawful "to collect personal information from a child" without giving notice and obtaining advance, verifiable parental consent.[46] Despite this Rule, Topps built a contest where the premise was to collect personal information from children, much of which Topps disclosed online. Topps made no effort to obtain verifiable parental consent for its practices.

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[43] FEDERAL TRADE COMMISSION. REVIEW OF FOOD MARKETING TO CHILDREN AND ADOLESCENTS -- FOLLOW-UP REPORT, December 2012.

[44] *Participants' Pledges*, Council of Better Business Bureaus, http://www.bbb.org/council/the-national-partner-program/national-advertising-review-services/childrens-food-and-beverage-advertising-initiative/company-pledges (last visited Nov. 19, 2014).

[45] In some cases, Topps may also have actual knowledge of children on its sites. Although registration is not required, registration is permitted and it asks for a user name, password, secret question, and date of birth. It allows a visitor to choose a birth year ranging from 2011 to 1920. According to the Candymania privacy policy, "Registration information is used to enable visitors to take advantage of site offerings; respond to visitor's requests for products, services, and information; manage games; serve appropriate material; and/or customize the content your child sees when visiting the Sites." Appendix, Privacy Policy, at 2.

[46] 16 CFR §312.3.

### 1. Topps collected children's photographs and online contact information.

The COPPA Rule defines "collection" as "requesting, prompting, or encouraging a child to submit personal information online."[47] The rule then defines "personal information" as including "a photograph, video, or audio file where such file contains a child's image or voice."[48] Further, the definition of personal information includes "a screen or user name where it functions in the same manner as online contact information."[49]

Throughout the #RockThatRock contest, Topps requested children's photographs and screen names as a prerequisite to enter the contest. For example, on its Ring Pop Facebook page, Topps urged visitors to submit pictures and videos: "Only TWO more days to submit! Show us how you rock Ring Pop by tagging your pics and videos with #RockthatRock. Your entries could be featured in our next music video! Visit RockthatRingPop.com for more info, chosen entries will be contacted by Ring Pop."[50] The Candymania site continues to promote the hashtag even after the contest is over.[51]

This encouragement was wildly successful. Hundreds of children uploaded photos, which can still be found by searching Twitter, Instagram, and Facebook for "#RockthatRock." Topps posted many of these photos on its Ring Pop Facebook page. A screen shot of the Photos of Ring Pop album is shown below. Many the photos depict faces of children who look younger than thirteen.

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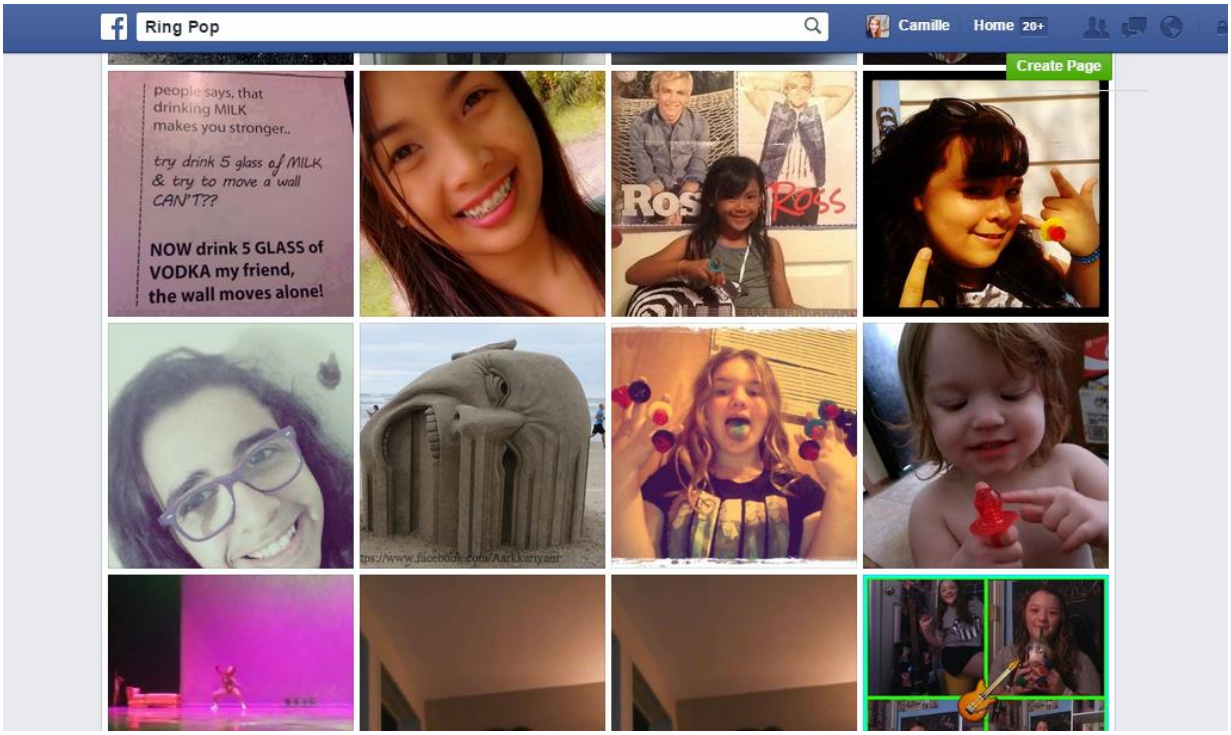
[47] *Id.* §312.2 (definition of "collection") (2013).
[48] *Id.* §312.2 (definition of "personal information" (8)) (2013).
[49] *Id.* §312.2 (definition of "personal information" (4)) (2013).
[50] Appendix, Figure 11.
[51] *E.g.*, *What does #RockThatRock mean to you?*, Candymania, http://www.candymania.com/video/what-does-rockthatrock-mean-to-you.




Below are two specific examples of personal photographs that children submitted at Topps' encouragement. The first is from the Twitter user "WishinIWasRydel." Rydel is one of the members of R5, so the young girl appears to be a fan of the band. The photo shows her kissing her Ring Pop, and the caption reads, "i have one moore ringpop but i forgot it at my dads house ufcurse…" This girl looks younger than thirteen. The spelling errors and reference to her "dads house" further suggest that she is under age thirteen.

The second photo was submitted by the Twitter handle "Alex_cutie3." It depicts a young girl wearing a pink shirt and wearing a Ring Pop in her hair. The caption reads, "and this is how I ROCK MY RING POP! @RingPopOfficial #RockThatRock BTW THE RING IS ON MY HEADBAND [three smiley faces]." The photo and language suggest that this girl is under thirteen. Additionally, she uses personal pronouns and speaks directly to Ring Pop, indicating that she, not a parent, submitted the photo to the contest.

Maria 2/10/14 @WishinIWasRydel · Apr 3
#RockThatRock i have one moore ringpop but i forgot it at my dads house ufcurse....
pic.twitter.com/JASebMkor2
Reply Retweet Favorite
Flag media

Things Are Looking † @Alex_cutie3 · Mar 31
and this is how I ROCK MY RING POP! @RingPopOfficial
#RockThatRock BTW THE RING IS ON MY HEADBAND!
pic.twitter.com/gXLwfZpWLK
Ring Pop, Rydel Lynch, Ross and 4 others
Reply Retweet Favorite
Flag media

Topps also collected children's screen names during the contest. When children submitted their photos using the hashtag #RockThatRock on Twitter and Instagram, they also disclosed their "handles" or screen names on those social media sites. On Twitter, for example, screen names are attached to the posts with the uploaded photos; the above photos show that the girls' Twitter names are "WishinIWasRydel" and "Alex_cutie3," respectively. These screen names function as online contact information because they enable Topps or anyone else on the internet to contact users through the direct message function, @replies, and "mentions."[52]

Like Twitter handles, Instagram screen names also function as online contact information. The photo below shows an Instagram photo submitted by a young girl with the screen name "xxdragonsrulexx." Anyone on the internet can view and comment on this photo and all of her other photos.

[52] Twitter describes @replies and mentions in its help center: "An @reply is any update posted by clicking the Reply button on a Tweet." "A mention is any Twitter update that contains "@username" anywhere in the body of the Tweet. (Yes, this means that @replies are also considered mentions.)" *What are @Replies and Mentions?*, Twitter, https://support.twitter.com/articles/14023-what-are-replies-and-mentions (last visited Dec. 1, 2014).

Thus, there is no question that Topps collected personal information, including photographs and screen names, from children. The fact that Topps collected this personal information through third party social media websites does not, as discussed in the next section, insulate Topps from complying with the COPPA Rule.

**2. Topps is responsible for collecting children's personal information it requested by means of social media even if social media is not intended for use by children.**

The revised COPPA Rule defines an operator as any person who collects personal information or "on whose behalf such information is collected or maintained."[53] Information is collected "on behalf" of an operator when "the operator benefits by allowing another person to collect personal information directly from users of such Web site or online service."[54] These

[53] 16 CFR §312.2.
[54] *Id.*

changes were intended to ensure that COPPA requirements "cannot be avoided through outsourcing offerings to other operators in the online ecosystem."[55]

Here, Topps requested, prompted and encouraged children to submit personal information through third parties and benefitted from this third party collection. When children posted their pictures of themselves with a Ring Pop on Facebook, Instagram, or Twitter, Topps benefited from the wider promotion of the candy. Topps further benefitted because it did not have to deal with contest logistics, such as creating its own system to collect and maintain contest entries. Moreover, using social media allowed Topps to easily view and choose the "winning" photos to include in the music video.

It is no defense for Topps to claim that only persons over age twelve would be using Facebook, Twitter and Instagram. In the first place, Candymania, which promoted the contest and continues to promote the #RockThatRock hashtag, is a child-directed website. Thus, Topps must assume that all users of the website are children.[56] Further, it would be unreasonable for Topps to rely on social media platforms to ensure all users are thirteen or older. Neither Twitter nor Instagram use any form of age-gating even though they claim that they are not intended for use by children.[57] Anybody, including children, can readily sign up. While Facebook does ask users to provide date of birth as part of the registration process, it is common knowledge that millions of children nonetheless have accounts on Facebook.[58]

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[55] 78 Fed. Reg. 3972, 3977 (Jan. 17, 2013).

[56] *Id*. at 3984.

[57] Twitter's Privacy Policy indicates that its services are "not directed to children." *Twitter Privacy Policy*, Twitter, https://twitter.com/privacy (last visited Dec. 4, 2014). Instagram's Terms state that the user must be at least 13. Terms of Use, Instagram, http://instagram.com/about/legal/terms/# (last visited Dec. 4, 2014).

[58] "Of the 20 million minors who actively used Facebook in the past year, 7.5 million—or more than one-third—were younger than 13 and not supposed to be able to use the site." That Facebook Friend Might be 10 Years Old, and Other Troubling News, Consumer Reports (June 2011), http://www.consumerreports.org/cro/magazine-archive/2011/june/electronics-computers/state-of-the-net/facebook-concerns/index.htm.

Finally, even if not a direct violation of the COPPA Rule, it is inherently unfair for Topps to encourage its users, which are admittedly children, to use adult-oriented social media websites. Thus, because Topps benefitted from this collection, it is the relevant operator and must comply with the COPPA Rule.

### 3. Topps disclosed personal information collected from children after the contest.

Once it collected personal information from children, Topps disclosed that information online. The COPPA Rule defines "disclosure" as "the release of personal information collected by an operator from a child in identifiable form for any purpose" and "making personal information collected by an operator from a child publically available in identifiable form by any means."[59]

Topps disclosed the personal information collected from children in multiple ways. First, Topps took photos submitted by children and used them in a music video it released on Candymania and Youtube. The #RockThatRock music video contains eighty unique photographs and video clips of Ring Pop fans wearing Ring Pops, many of which contain children.[60]

Some screenshots from the music video are shown below. The first screenshot shows a young girl holding a Ring Pop and playing with a turtle. The second shows two young girls posing with their Ring Pops. The third shows a young boy wearing a Ring Pop and playing a guitar.

[59] 16 CFR §312.2.

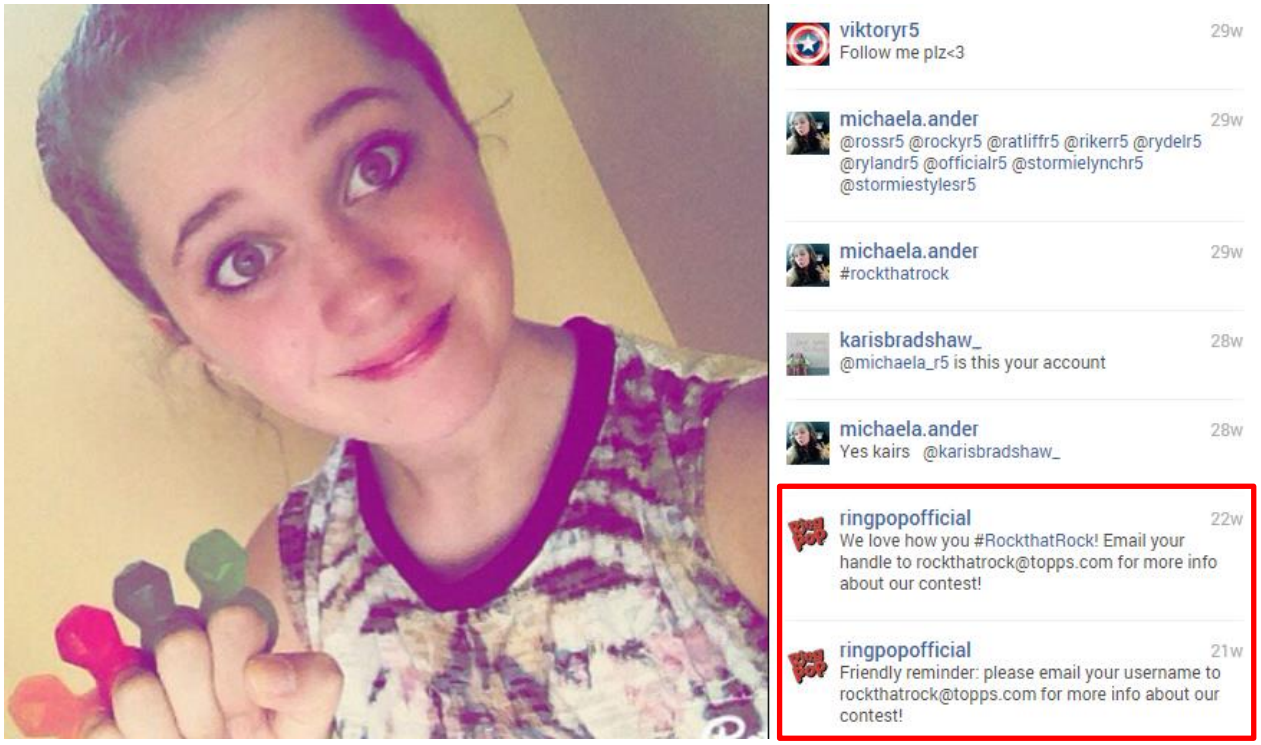
[60] The fact that Topps hand-picked which photos to disclose in the music video additionally indicates that Topps had actual knowledge that it collected and disclosed personal information from children. However, it is not necessary to show actual knowledge here because the Candymania website is directed to children.

Second, Topps disclosed children's photos and contact information on its Ring Pop Facebook page, and other social media pages, even after the contest finished. Topps now promotes #RockThatRock Friday on all three social media sites. For example, Topps posted a photo of two young girls from Instagram to Facebook on September 5, 2014 (see below). Topps captioned the photos as, "It's #RockThatRock Friday! Thanks to @corrinnar5 for rocking that rock with Ring Pop!" Topps disclosed the child's photo and the child's screen name in this post.

On November 14, 2014, Topps posted the photo below showing three young children eating Ring Pops behind a baseball field. The caption reads, "It's #RockThatRock Friday! Show us how you rock that #RingPop like @princessglitter3310."[61] Like the above photograph, this post makes the children's photo and screen name publically available in a new format.

[61] This photo was uploaded by princessglitter3310 to Instagram in October 2014. Children, it appears, continue to use the hashtag #RockThatRock well after the contest ended.

Finally, Topps used screen names to directly contact, and in some cases re-contact, contest participants. Topps used Twitter to send messages such as "We love how you #Rockthat Rock! Email your handle to rockthatrock@topps.com for more info about our contest!"[62] Topps also communicated with fans on Instagram using the hashtag #RockThatRock. As shown in the Instagram screenshot below, when Topps' first attempt to solicit this young girl's screen name failed, Topps sent her a "friendly reminder" to email her username to rockthatrock@topps.com.




These communications do not fall under the "one-time contact" exception. This exception applies only where "the operator collects online contact information from a child for the sole purpose of responding directly on a one-time basis to a specific request from the child, and where such information is not used to *re-contact* the child and is deleted by the operator from its

[62] Appendix, Figure 12. Topps "tweeted" this message to users who had submitted photographs after the contest ended on April 30, 2014. It is unclear why Topps encouraged these users to get more information about the contest after it ended.

records."[63] The FAQs explain that operators may use this exemption for contests only "if you collect children's online contact information, and only this information, to enter them into the contest, and then only contact such children once when the contest ends to notify them if they have won or lost."[64] Here, Topps's collection is not limited to online contact information and it is using the online contact information to re-contact users and for purposes other than notifying them that they have won or lost.

Thus, Topps collected personal information from children, used children's online contact information to contact them, and disclosed children's pictures and contact information on widely viewed social media platforms. Topps did this without providing notice to parents.

### C. Topps did not give direct notice to parents.

The COPPA Rule requires operators to make "reasonable efforts, taking into account available technology, to ensure the parent of a child receives direct notice of the operator's practices with regard to the collection, use, or disclosure of personal information from children."[65]

Topps provided no direct notice. In fact, it did not have any means to provide direct notice because it chose to collect information from children through third party social media sites that do not provide such capability. In addition, the Candymania website does not collect email addresses for parents even when a child registers on Candymania and provides her actual date of birth showing she is under thirteen. In the event that a parent visited Candymania and read the privacy policy, she would not be accurately informed of Topps' collection practices.

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[63] 16 CFR §312.5(c)(3) (emphasis added).
[64] FEDERAL TRADE COMMISSION, COMPLYING WITH COPPA: FREQUENTLY ASKED QUESTIONS, I(1) (July 16, 2014).
[65] 16 CFR §312.4(b).

### D. The Topps privacy policy does not provide notice to parents of its collection of children's photos and contact information.

The COPPA Rule states that operators must "provide notice on the Web site or online service of what information it collects from children, how it uses such information, and its disclosure practices for such information."[66]

The Topps privacy policy does not provide adequate notice of Topps' collection and disclosure practices. Regarding collection, the policy states in essence that Topps collects certain registration information and that it "may use Tracking Technologies to collect Computer Information automatically to support internal operations, such as providing web analytics."[67] Regarding disclosure, the policy states that Topps only discloses personal information to (1) law enforcement and (2) co-branded advertising partners with parental consent.[68] The policy's contest section states that if the site offers a contest, children may be required to provide first name and email address to be used on a "one-time basis."[69] In none of these sections or anywhere in the policy does Topps tell its children users or their parents that Topps could potentially collect and disclose vast amounts of personal information (including photos) from and about children through third party social media platforms such as Facebook, Twitter, and Instagram. This is a significant and material omission of key information parents would want to know when they review the privacy policies of websites their children visit.

Furthermore, the Topps policy affirmatively misleads parents and gives them a false sense of security. Despite numerous COPPA Rule violations outlined in this request for investigation, the policy assures parents that Topps "respects the privacy rights of our users, particularly those under thirteen, and understands the importance of protecting these rights."[70]

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[66] 16 CFR §312.3(a).
[67] Appendix, Privacy Policy, at 2-3.
[68] *Id*. at 4.
[69] *Id*. at 3.
[70] *Id*. at 1.

The policy also states that "we recognize the need to provide additional privacy protection for children on the Children's Sites. Our privacy practices are guided by the United States Children's Online Privacy Protection Act of 1998, as well as data privacy laws in the United States."[71] Thus, Topps' privacy policy falsely implies it complies with COPPA when it does not.

### E. Topps did not obtain verifiable parental consent for the collection, use, and disclosure of children's photographs.

The COPPA Rule requires operators to "obtain verifiable parental consent prior to any collection, use, and/or disclosure."[72] Topps made no effort to obtain parental consent. Instead, Topps asserted that mere use of its services constituted consent. For example, the Terms of Use for the #RockThatRock stated that posting material with the promoted hashtag constituted consent "or your parent or guardian's consent."[73] Additionally, the privacy policy states, "By visiting a Children's Site, whether as a registered user or otherwise, you acknowledge, understand and agree that you are giving us your consent to set and access Cookies on your device and track your activities and use of a Children's Site through these Tracking Technologies and Identifiers."[74] Neither of these forms of "consent" is sufficient to comply with COPPA's requirement of verifiable parental consent.

Thus, throughout the #RockThatRock contest, Topps violated the COPPA Rule.

## III. Topps' privacy policy otherwise does not comply with the COPPA Rule.

In addition to not providing website notice during the #RockThatRock contest, the Topps privacy policy fails many other requirements of the COPPA Rule.

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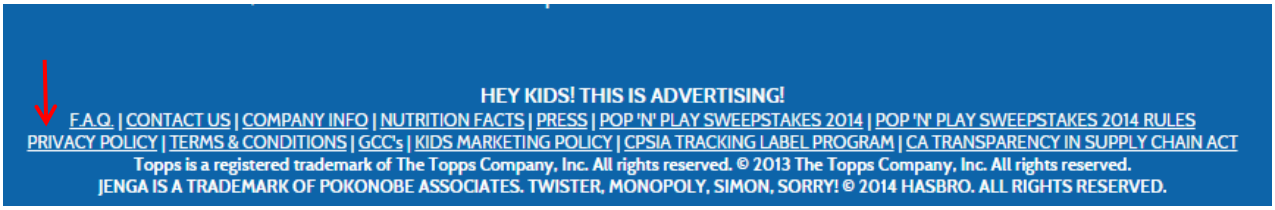
[71] *Id*. at 2.
[72] 16 CFR §312.3(b).
[73] Appendix, Terms of Use.
[74] Appendix, Privacy Policy, at 3.

### A. The link to the privacy policy is not prominently displayed.

The COPPA Rule requires operators to "post a prominent and clearly labeled link" to the privacy notice on the home or landing page of the website and at each page where information is collected from children.[75] The COPPA FAQs explain that "[t]he Commission does not consider 'clear and prominent' a link that is in small print at the bottom of the home page, or a link that is indistinguishable from a number of other, adjacent links."[76]

The link to the Topps privacy policy on the home page is located at the bottom (third row, first link on the left), along with twelve other links. The policy link is not differentiated in any way, and the link is hard to see because it is in small white font against a blue background, as shown in screenshot below.




In addition, the privacy policy is nearly impossible find because of the site's "infinite scrolling" design. Infinite scrolling means that the site continuously reloads when the user reaches the bottom of the page.[77] CDD's attorneys found that a user had to scroll down 18 times before the page would stop reloading and the user could finally click on the privacy policy link. Thus, the policy is not prominently posted.

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[75] 16 CFR §312.4(d).

[76] FEDERAL TRADE COMMISSION, COMPLYING WITH COPPA: FREQUENTLY ASKED QUESTIONS (July 16, 2014).

[77] Hoa Loranger, *Infinite Scrolling is Not for Every Website*, Nielsen Norman Group (Feb. 2, 2014), http://www.nngroup.com/articles/infinite-scrolling.

### B. The content of the privacy policy does not comply with the COPPA Rule.

The COPPA Rule requires that notice be "clearly and understandably written, complete, and must contain no unrelated, confusing, or contradictory material."[78] The Topps privacy policy states that Topps may collect "(a) birth date; (b) user name and password; and (c) other profile information such as avatar preferences. This information allows us to personalize the child's experience while preserving anonymity."[79] The policy is incomplete because it does not specify what "other profile information" may be collected from children and does not describe how it "personalize[s] the child's experience."[80]

To be complete, the online notice must also state the "name, address, telephone number, and email address of all operators collecting or maintaining personal information from children through the Web site," or provide contact information for a single operator to respond to all inquiries from parents. Topps' privacy policy discloses the following information:

> Some of the Children's Sites display social media links such as the Facebook "Like" or Google "+1". When you link to social networking platforms, you share your information with them and their privacy policy applies to their collection, use, and disclosure of such information. In addition, they may be able to collect information about you, including your activity on the Children's Sites, and they may notify your connections on the social networking platform about your use of the Children's Sites. Such services may also employ unique identifiers which allow your activity to be monitored across multiple websites for purposes of delivering more targeted advertising to you. The privacy policies of such services may be different from our own and we encourage you to read them.

[78] 16 CFR §312.4(a).

[79] Appendix, Privacy Policy, at 2.

[80] Moreover, this language suggests that Topps may be profiling users in violation of the COPPA Rule. 16 CFR §312.2 (definition of "support for the internal operations of [a] Web site or online service" does not include "amass[ing] a profile on a specific individual" or contacting a specific individual, "including through behavioral advertising.").

There are several problems with this disclosure. First, it is incomplete because Topps does not list the contact information for Facebook and Google, does not list any other third party collectors, and does not designate a single representative to handle inquiries from parents.

Second, Topps is attempting to avoid its responsibility for third party collection. The COPPA Rule places strict liability on first party operators for third party data collection on that site because "it cannot be the responsibility of parents to try to pierce the complex infrastructure of entities that may be collecting their children's personal information through any one site."[81] In stating the social media site's "privacy policy applies to their collection, use, and disclosure of such information," which "may be different from our own and we encourage you to read them,"[82] Topps is improperly asserting that it has no responsibility for the third parties collecting data on its child-directed website.

Finally, the FTC should investigate whether Topps is allowing third parties to track and direct behavioral advertising to children. The privacy policy states that "Some of its Children's Sites display social media links such as the Facebook 'Like' or Google '+1,'" and that that such services may collect information about "your activity on the Children's Sites," and "may also employ unique identifiers which allow your activity to be monitored across multiple websites for purposes of delivering more targeted advertising to you."[83] This conduct would violate the COPPA Rule prohibition on the use of persistent identifiers to track children "over time and across different websites,[84] and the prohibition on using persistent identifiers to contact a specific individual through behavioral advertising.[85]

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[81] 78 Fed. Reg. at 3977.
[82] Appendix, Privacy Policy, at 2.
[83] *Id*.
[84] 16 CFR §312.2 (definition of personal information).
[85] *Id.* (defining "support for internal operations" to exclude contacting a specific individual or engaging in behavioral advertising).

## IV. Topps improperly conditioned participation on disclosure of more personal information than was necessary.

The COPPA Rule makes it unlawful to "condition a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity."[86] Topps violated this prohibition during the #RockThatRock contest. There were many other ways to allow children to participate in a contest. Topps could have asked children to draw a picture to enter the contest, or write about how they "rock Ring Pop," or even submit their email for a raffle. Instead, Topps designed the contest so that a child could only enter the contest by disclosing a photograph of herself or himself via social media. Requiring disclosure of a photo to take part in the contest is unreasonable. The FTC should not allow this kind of contest to occur without parental consent.

## V. Topps violated the data deletion and retention requirements of COPPA.

The COPPA Rule requires that "an operator of a Web site or online service shall retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the purpose for which the information was collected."[87]As discussed above in Section II.B.3, Topps continued to use children's photos and contact information months after the contest was over. In addition, the Terms of Use violated this requirement because it purports to grant Topps all rights to use the photo "in any form or media now or hereafter known for any and all purposes deemed by Topps in its sole discretion" and to grant Topps an "irrevocable, non-exclusive, perpetual" right to children's photographs without any limit to the length of time Topps may use the photos.[88] Thus, Topps is not in compliance with the COPPA data retention and deletion requirement.

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[86] 16 CFR §312.3(d).
[87] 16 CFR §312.10.
[88] Appendix, Terms of Use.

## Conclusion

Topps violated COPPA and the COPPA Rule when it conducted a contest where it collected photographs and online contact information from children without providing notice and obtaining verifiable parental consent for those practices. The Topps privacy policy further violates the COPPA Rule because it is not prominently placed on the home page and by claiming Topps is not responsible for third party data collection that occurs on its website. Thus, the FTC should take prompt action to stop these violations and grant all other appropriate relief.

Respectfully submitted

/s/

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Dated: December 9, 2014

# Appendix

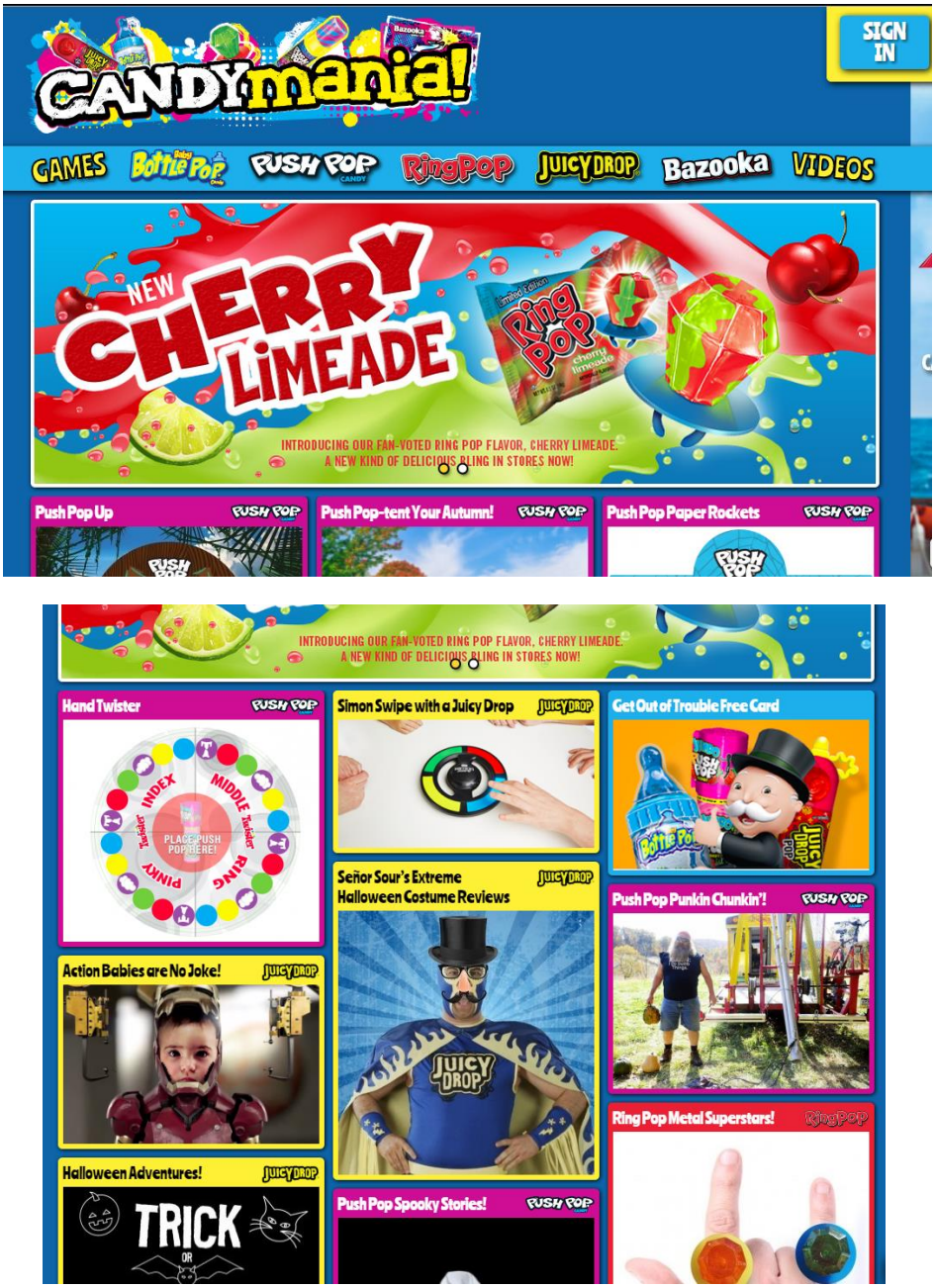


Figure 1: Candymania Homepage. November 10, 2014

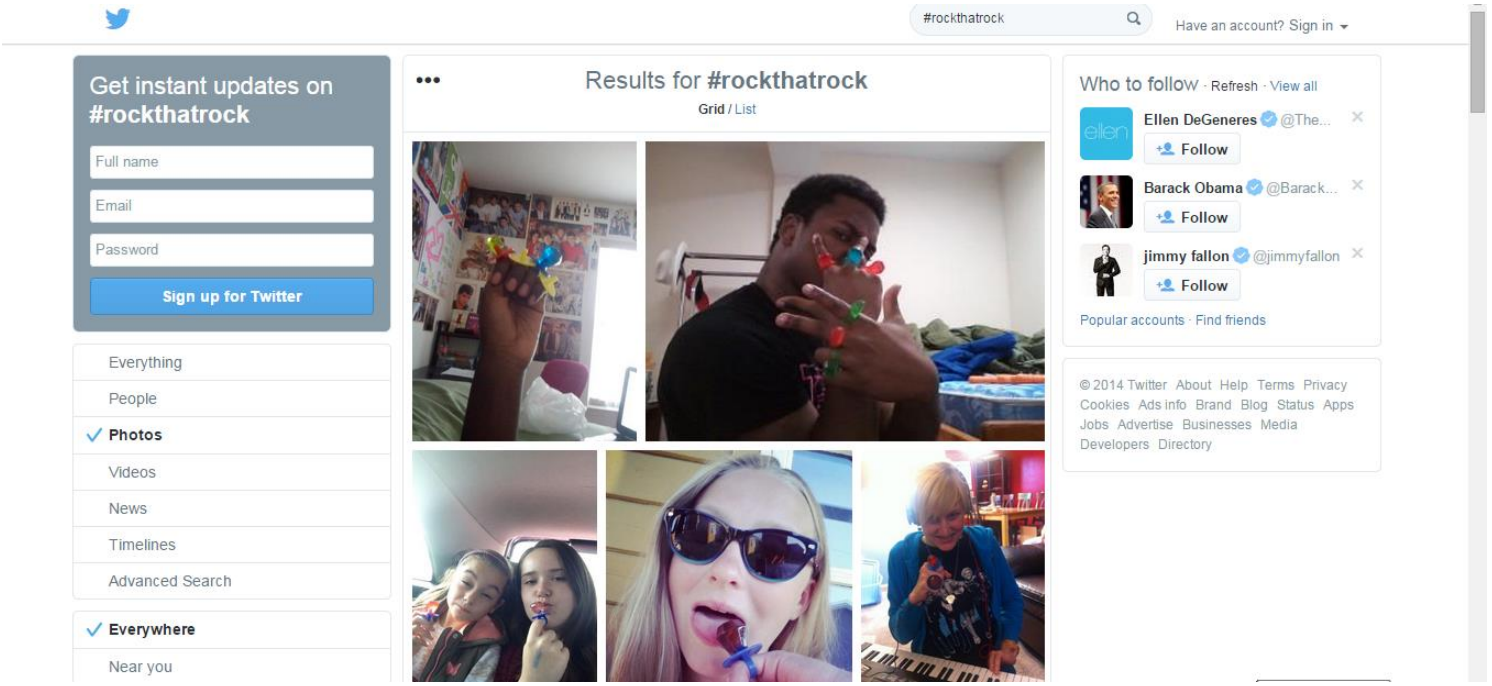


Figure 2: Twitter search results for #RockThatRock on October 23, 2014.

Figure 3: Ring Pop Facebook Post on November 14, 2014. “It’s #RockThatRock Friday! Show us how you rock that #RingPop like @princessglitter3310!”

Figure 4: Ring Pop Facebook Post linking to BOP and Tiger Beat article on March 25, 2014.

Figure 5: “Hand Twister” printable game available on Candymania.com.

Figure 6: "Senor Sour's Extreme Halloween Costume Reviews" on Candymania.com.

Figure 7: “Push Pop Up” game on Candymania.com.

Figure 8: “Old School Ring Pop Commercial” on Candymania.com.

Figure 9: “Dragon Racers: Dragon Berry Dash” advergame on Candymania.com.

Figure 10: "Halloween Adventures" on Candymania. One tip says, "Tell your dad you saw a ghost, and it wants a dollar."

Figure 11: Ring Pop Facebook Post on April 28, 2014 encouraging children to enter the contest.

Figure 12: Ring Pop Official Tweets to fans who submitted their photos to the contest. These tweets ask fans to send more information: "We love how you #RockThatRock! Email your handle to rockthatrock@topps.com for more info about our contest!"

SIGN IN or SIGN UP

# TOPPS CHILDREN'S PRIVACY POLICY

Last Updated: May 22, 2014

## WHAT THIS POLICY COVERS

Welcome! The Topps Company, Inc. ("Topps") respects the privacy rights of our users, particularly those under 13, and understands the importance of protecting these rights. Before you use the Children's Sites (as defined below), please read the following Privacy Policy carefully to understand how your personally identifiable information will be treated as you make full use of our offerings.

This Privacy Policy, which may be found at: www.bazookajoe.com and www.candymania.com privacy applies only to personally identifiable information collected on Topps web sites directed to children (the "Children's Sites"). A current list of Topps Children's Sites that are governed by this Privacy Policy:
www.candymania.com; and
www.bazookajoe.com.

Topps and its affiliated entities are collectively referred to in this Privacy Policy as "Topps," "we" or "us." By accessing any of the Children's Sites, you are consenting to this Privacy Policy or any Privacy Policy in effect at the time you access the Children's Sites. This Privacy Policy describes what information the Children's Sites collect from users, including children, when they visit the Sites; how such information is used and stored; when such information may be disclosed to third parties; how users, parents, and

guardians can control the use and disclosure of collected information; and how such information is protected.

At Topps, our consumer's privacy is important to us, and we recognize the need to provide additional privacy protection for children on the Children's Sites. Our privacy practices are guided by the United States' Children's Online Privacy Protection Act of 1998, as well as data privacy laws in the United State Younger visitors should always check with their parents or guardians before entering information on any website or mobile application and we encourage families to discuss their household guidelines regarding the online sharing of personal information.

If you do not consent to the terms of this Privacy Policy, please do not use the Children's Sites because your use of the Children's Sites represents your consent. If you have already provided personal information, please contact us about how you would like us to handle such information.

**I. INFORMATION COLLECTION AND USE.**
We may request or collect certain information when you visit the Children's Sites. However, visitors are required to share only the information that is reasonably necessary to participate in the particular activit

**A. Registration Information:** The information required to register varies by Children's Site, but may include: (a) birth date; (b) user name and password; and (c) other profile information such as avatar preferences. This information allows us to personalize the child's experience while preserving anonymit

Registration information is used to enable visitors to take advantage of site offerings; respond to visitor's requests for products, services, and information; manage games; serve appropriate material; and/or customize the content your child sees when visiting the Sites.

**B. Social Media Links:** Some of the Children's Sites display social media links such as the Facebook "Like or Google "+1". When you link to social networking platforms, you share your information with them and their privacy policy applies to their collection, use, and disclosure of such information. In addition, they may be able to collect information about you, including your activity on the Children's Sites, and they may notify your connections on the social networking platform about your use of the Children's Sites. Such services may also employ unique identifiers which allow your activity to be monitored across multiple websites for purposes of delivering more targeted advertising to you. The privacy policies of su services may be different from our own and we encourage you to read them.

**C. Computer Information Collected by Us:** When visitors come to a Children's Site, we may automatically collect certain information from their computers, such as the type of computer operating system (e.g., Windows XP or Mac OS), the visitor's IP address, as permitted for the internal functioning o the Children's Sites the web browser (e.g., Internet Explorer, Safari, Chrome and Firefox), information collected through the use of unique identifiers such as cookies (see below), information regarding the Internet service provider, and other standard server log information ("Computer Information").

We may use cookies, web beacons, tokens or similar technologies (collectively referred to as "Tracking Technologies") on the Children's Sites. Cookies (which may be html files, Flash files or other technology) are text files that help store user preferences and activity. Web beacons (also known as image tags, gif o web bugs) are small pieces of code used to collect advertising data, such as counting page views, promotion views or advertising responses. The Children's Site and/or third parties may use Tracking Technologies to collect Computer Information automatically to support internal operations, such as

providing web analytics.

We may use Tracking Technologies to help tailor our content, allow users to move between certain Children's Sites without logging into each Children's Site, enable the internal functioning of the Children Sites, understand Site and internet usage, improve or customize the content or offerings on this Children's Site, personalize your experience on the Children's Site (for example, to recognize you by username when you return to the Site), save your password, contextual advertising, and/or maintain an administer the Children's Sites. These Tracking Technologies collect click stream data and additional oth information regarding your visits to the Children's Sites (such as your visits to specific webpages or use c features), may collect such other information across multiple sessions on the Children's Sites and may also collect your IP address or some other identifier unique to the device you use to access the Children' Site ("Identifier"). An Identifier may be automatically assigned to any device you use to access the Children's Sites to enable internal functioning of the Children's Sites. By visiting a Children's Site, whethe as a registered user or otherwise, you acknowledge, understand and agree that you are giving us your consent to set and access Cookies on your device and track your activities and use of a Children's Site through these Tracking Technologies and Identifiers.

You may be able to have the device you use to access the Children's Sites warn you each time a cookie (other than Flash cookies) or most other Tracking Technologies is being set, or you can choose to turn of such warnings. This is done through your browser on the device you use to access the Children's Sites. Additional information on warnings and removal of warnings may be available through your browser's support feature. Deleting, rejecting, disabling or turning off Tracking Technologies through the above options will not remove Flash cookies. Please be aware that certain areas and features of Children's Site can only be accessed in conjunction with Tracking Technologies, and that disabling Tracking Technologie might prevent you from accessing such content. We do not use Tracking Technologies for any other purpose other than those described above.

**D. Contests and Sweepstakes:** The Children's Sites may offer online contests and sweepstakes. To ente these contests and sweepstakes, you may be required to provide your first name and email address and/or additional information required for the management of the contest or sweepstakes. On the Children's Sites we may collect a child's e-mail address when the child enters a contest or sweepstakes and store such child's email address for the duration of the sweepstakes, and use it solely for notificatior on a one-time basis if he or she is the winner. For certain contests or sweepstakes on the Children's Site we may ask for the email address of the child's parent or guardian to inform the parent or guardian of hi or her child's entry and give the parent or guardian the option to have the child's entry deleted, or to obtain a parent's consent.

**E. Other Data Collection and Use.**
We may collect information from visitors when they contact us with questions and comments. We may use this information, along with any of the other information described above, to (i) analyze use of the Children's Sites and understand and improve our service offerings; (ii) prevent potentially prohibited or illegal activities; or(iii) for any other purposes disclosed to you at the time we collect your information or pursuant to your consent. We do not use the e-mail address of a child except to respond to a question and then it is permanently deleted.

## II. DISCLOSURE TO THIRD PARTIES.

We may share your information with third parties for the limited purposes described below. In the U.S., parents of children under the age of 13 have the option of consenting to the collection and use of their

child's personal information without consenting to the disclosure of that information to certain third parties.

**A. Law Enforcement and Safety.**
You acknowledge, consent, and agree to the extent legally permissible in your jurisdiction to allow us to access, preserve, and/or disclose the information we collect and/or content you provide to us (including information you may have posted on bulletin boards or internal site communication systems) to a law enforcement agency or other third parties if required to do so by law or with a good faith belief that such access, preservation, or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce the Terms of Use of the respective Children's Sites; (c) respond to claims that the content violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property or personal safety of the owners of the Children's Sites, any user of the Children's Sites, a third party or the general public. We also may disclose user information whenever we believe disclosure is necessary to limit our legal liability; to protect or defend our rights or property; or protect the safety, rights, or property of others.

If you have concerns about the conduct of a particular user, please send an e-mail to privacypolicy@topps.com. This email is not to contact us about the status of your account.

**B. Agents.**
Information collected through the Children's Sites may be transferred, disclosed or shared with third parties engaged by us to handle and deliver certain activities, such as sweepstakes and contests, technical and processing functions, such as sending postal mail and email, maintaining data integrity, programming operations, user services or technology services. We may provide these third parties information collected as needed to perform their functions, but they are prohibited from using it for other purposes and specifically agree to maintain the confidentiality of such information.

**C. Co-Branded Sites and Features**
Some of the Children's Sites offer co-branded services and features, such as events and promotions that we put together with another company ("Co-Branded Partner"). Such services may be hosted on a Children's Site and/or our Co-Branded Partner's website. We do not share a child's personal information with our Co-Branded Partners absent parental consent.

**D. Business Transfer**
In the event that assets relating to one or more of the Children's Sites are transferred or sold to another entity as a result of, for example, a corporate sale, merger, consolidation, asset sale, or in the unlikely event of bankruptcy, information collected at the Children's Sites may be transferred to the acquiring company.

**E. With Your Consent**
We may otherwise disclose your information pursuant to your consent.

**III. INTERNATIONAL TRANSFER.**
The Children's Sites are designed for and targeted to U.S. audiences and are governed by and operated accordance with the laws of the U.S. While users from countries other than the U.S. may access certain the Children's Sites, we make no representation that the Children's Sites are operated in accordance with the laws or regulations of, or governed by, other nations. By participating in activities on the Children's Sites, you certify that you meet the age and other eligibility requirements for the Children's Sites as set

forth in the respective Terms of Use Agreement for each Children's Site. If you do not meet the age and other eligibility requirements of the particular Children's Site you are visiting, please discontinue using th Children's Site immediately as your continued use of the Children's Sites indicates that you are agreeing to the collection, use, disclosure, management and storage of your Information as described in this Privacy Policy.

Please be aware that by providing us with personal information, you understand and agree that: (1) your personal information may be transferred to and stored on servers located outside your resident jurisdiction; (2) to the extent you are a resident of a country other than the United States, you consent t the transfer of such data to the United States for processing by our affiliates in accordance with this Privacy Policy and (3) the Privacy Policy and the collection of information pursuant to the Privacy Policy shall be governed by and construed in accordance with the laws of the United States, without giving effect to any principles of conflicts of law.

## IV. SECURITY, STORAGE AND RETENTION OF INFORMATION.

The Children's Sites maintain reasonable technical and organizational steps to help ensure that information collected is secure, including limiting the number of people who have physical access to ou database servers and use of electronic security systems and password protections which guard against unauthorized access. We also take reasonable steps to help make sure our third-party agents protect th security of your personal information. However, as with most Internet sites or services, it is possible that third parties may unlawfully access such personal information through a number of means despite our efforts. Information collected at the Children's Sites will not be stored for longer than is necessary for th purposes described in this Privacy Policy, or to otherwise meet legal requirements.

## V. ACCESSING AND CORRECTING INFORMATION; TERMINATION OF WIRELESS SERVICES.

### A. Reviewing Your Information

You have the right to access, update and correct factual inaccuracies in your or your child's personally identifiable information that we collect online at the Children's Sites, subject to certain exceptions. To d so, you should log into your or your account or you may e-mail us at privacypolicy@topps.com. To help protect your privacy and the security of your personally identifiable information, we will take reasonable steps to verify your identity before granting access. We will take steps to verify the identity of anyone requesting personally identifiable information about a child and to ensure that the person is in fact the child's parent or legal guardian.

## VI. LINKS TO THIRD PARTIES.

The websites that comprise the Children's Sites may contain links to other sites, including those of socia networking platforms. These other websites are governed by their own privacy policies or information collection practices, which may be substantially different from ours. We encourage visitors to other websites to review the privacy policies and information collection practices of those websites.

## VII. YOUR CALIFORNIA PRIVACY RIGHTS.

California Civil Code Section 1798.83 permits our visitors who are California residents to request certain information regarding our disclosure of personal information to third parties for their direct marketing purposes. To make such a request, please send an email to or write us:
privacypolicy@topps.com email, or you may contact us via regular mail at:

Topps CA Privacy Coordinator

The Topps Company, Inc.
One Whitehall Street
New York, New York 10004

This document is the sole statement of the Children's Sites' Privacy Policy and no summary, restatemer or other version thereof, or other privacy statement or policy, in any form, including, without limitation, machine-generated, is valid. In interpreting this Agreement, the English version governs the interpretati and meaning of the obligation set forth herein. To the extent there is an ambiguity or conflict with the Privacy Policy in other languages, the Privacy Policy in English governs.

## VIII. CONTACT US

If you have any other questions about our information handling practices, including our practices with respect to children's personal information, please contact us at:

Topps Privacy Coordinator
c/o The Topps Company, Inc.
One Whitehall Street
New York, New York 10004
Or email us at:
privacypolicy@topps.com
Or call this number:
+1 212-376-0300

## IX. POLICY MODIFICATIONS

From time to time, we may update this Privacy Policy and will post the revised policy here. We encoura you to periodically check back to this policy statement at our website to learn what information we collect, how we use it, and with whom we share it. By accessing any of the Children's Sites, you are consenting to this Privacy Policy or any Privacy Policy in effect at the time you access the Children's Site This Privacy Policy describes what information the Children's Sites collect from users, including children when they visit the Sites; how such information is used and stored; when such information may be disclosed to third parties; how users, parents, and guardians can control the use and disclosure of collected information; and how such information is protected.


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*If you are under the applicable age of majority, a parent or legal guardian must agree to these terms.